

## REMARKS

In the Office Action mailed April 10, 2006, the Examiner rejected claim 1, 3, 4, 6-10, 12-14 and 18-26 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No.: 5,810,253 to Ohayon (hereinafter “Ohayon”). Claims 7 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ohayon in view of U.S. Patent No. 6,805,306 to Huang (hereinafter “Huang”), or U.S. Patent No.: 4,846,003 to Marquiss (hereinafter “Marquiss”). Claims 20 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ohayon in view of U.S. Patent No.: 5,932,204 to Joshi (hereinafter “Joshi”).

By this paper, claims 1-26 have been cancelled and claims 27-52 have been added to capture the essence of the discussion Applicant had with Examiner in their interview of May 31, 2006. In view of that interview and the following remarks, Applicant respectfully submits that claims 27-52 are in condition for allowance.

### §102 Rejection of the Claims

Claims 1, 3, 4, 6-10, 12-14, and 18-26 were rejected under 35 USC §102(b) as being anticipated by Ohayon. As the Examiner is aware, in order for a reference to anticipate a claim under 35 U.S.C. §102(b), “each and every element as set forth in the claim [must be] found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), cited in MPEP §2131. The MPEP further clarifies that “[t]he identical invention must be shown in as complete detail as is contained in the claim.” MPEP §2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). New claims 27-51 are not anticipated by Ohayon.

New independent claims 27, 28, and 49 include the limitation of a separate chamber that temporarily holds or retains the volatile substance. The chamber must then be moved in order for the volatile substance from dispensing onto the emanator. The controller that allows the chamber to be moved can be positioned to receive volatile substance from the cartridge outlet will preventing said volatile substance from dispensing onto the emanator. Thus, volatile substance in the cartridge is at all times protected from the outside environment. In contrast, the device disclosed in Ohayon contains no such chamber. In Ohayon, an actuator aligns the fluid outlet with the device outlet such that the fluid passes directly onto the emanator. In Ohayon the movement of the device is to allow direct gravitational release. There is no intermediate holding

of the fluid or volatile substance in Ohayon as is claimed by Applicant. Each embodiment in Ohayon contains a bore through the actuating device such that fluid or volatile substance cannot be temporarily retained. In Ohayon, the discharge hole of the fluid reservoir is taught to be coaxial with the discharge opening of the housing. Thus, the embodiments of Ohayon do not protect the fluid in the original reservoir from exposure to the environment outside the device. Further, in Ohayon, the fluid seal is taught to be only about the discharge hole of the reservoir, thus preventing effective transportation of fluids as allowed by the seals 22 illustrated in Figures 1 and 1(a) of the present invention.

Additionally, because Ohayon is a direct pass-through device, Ohayon does not release a fixed amount of volatile substance as is claimed by Applicant. Ohayon controls release by timing. The release of substance in Ohayon will only be consistent if every actuation of the actuator is done for the same amount of time. In Ohayon, a user could dispense the entire contents of the device with one actuation. Applicant's device is designed for consistent release of substance. Applicant claims a device that controls release by the fixed volume of the chamber that can only accept fixed amounts of substance. The intermediate chamber prevents over release, which can have an undesired impact in surrounding environment. Claims 29-48 and 50-51 are dependent claims. Accordingly, Ohayon does not teach or suggest all the limitations of Applicant's claims and Applicant respectfully requests allowance of claims 27-51.

### **§103 Rejection of the Claims**

Claims 7 and 13 were rejected under 35 USC §103(a) as being unpatentable over Ohayon in view of Huang or Marquiss. Claims 20 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ohayon in view of Joshi. The Examiner's view was stated to be that Huang and Marquiss illustrate electric operation of a plunger, and that Joshi taught the use of a heating element. As a result, since, as illustrated above, Ohayon fails to teach each and every element of the rejected claims, these combinations similarly fail to teach each and every element of the rejected claims. Applicants thus respectfully request withdrawal of this rejection and allowance of the rejected claims.

**Rejoinder of Claims**

Pursuant to MPEP Section 821.04, Applicant requests rejoinder of the subject matter of original claims 5 and 15-17 which correspond to new claims 31 and 40-42. These claims depend from, and require all the limitations of, claim 28, the subject matter of which corresponds to the claims originally elected by Applicant and that Applicant submits is now allowable.

**Conclusion**

Applicant respectfully submits that the claims are in condition for allowance and earnestly requests notification to that effect. The Examiner is invited to telephone Applicant's attorney (801-978-2186) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3586

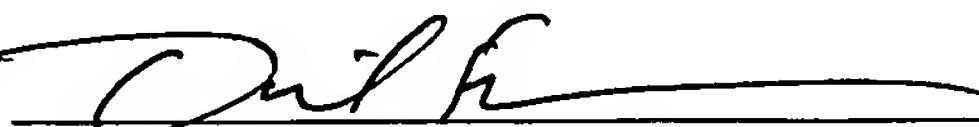
Respectfully submitted,

ASHOK V. JOSHI ET AL.

By their Representatives,

801-978-2186

Date 7/10/2006

By 

David Fonda

Reg. No. 39,672

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 10<sup>th</sup> day of July, 2006.

David Fonda

Name

  
Signature